IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BIOGY, INC., Plaintiff, vs. ALBERTSONS COMPANIES, INC. AND ALBERTSON'S LLC, Defendants.	Case No. 2:24-cv-838 Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, against Defendant Albertsons Companies, Inc. and its affiliated company Albertson's LLC (collectively "Albertsons") that relates to a U.S. patent owned by Biogy, Inc. ("Biogy"): 7,669,236 (the "'236 Patent" or the "Patent-in-Suit" at Exhibit A).

The Parties

1. Plaintiff Biogy, Inc. ("Biogy") is a company organized under the laws of the State of Delaware with a principal place of business in San Francisco, California.

2. Defendant Albertsons is a public company organized under the laws of the State of Delaware. Albertsons describes itself as "one of the largest food and drug retailers in the United States" that "operates stores across 35 states and the District of Columbia under 20 well-known banners." Albertsons registered with the Texas Secretary of State as Albertson's LLC in 2006.

3. Albertsons owns and operates 43 stores using the Albertsons name in Texas, including stores in this district located at 3603 McCann Rd, Longview, TX 75605; 100 E. Taylor St., Sherman, TX 75093; and 3001 S. Central Expy, McKinney, TX 75070; 200 W Crawford St.,

Denison, TX 75020; 4415 W 7th St., Texarkana, TX 75501; and 2321 W. University Dr., Denton, TX 76201.[1]

4. Defendant Albertsons Companies, Inc.'s can be served through their registered agent C T Corporation Systems, 1999 Bryan St., Ste. 900, Dallas, TX 75201.

5. Defendant Albertson's LLC can be served through their registered agent The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801.

Jurisdiction and Venue

6. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, et seq., and more particularly 35 U.S.C. § 271.

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) in which the district courts have original and exclusive jurisdiction of any civil action for patent infringement.

8. Albertsons is subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute because (i) Albertsons has done and continues to do business in Texas; (ii) Albertsons has committed and continues to commit acts of patent infringement in the State of Texas, including making, using, offering to sell, and/or selling accused products/services in Texas, and/or importing accused products/services into Texas, including via Internet sales, inducing others to commit acts of patent infringement in Texas, and/or committing a least a portion of any other infringements alleged herein, and (iii) Albertson's LLC is registered to do business in Texas (Filing number 800667937).

[1] See https://local.albertsons.com/tx.html

9. Venue is proper in this district as to Albertsons pursuant to 28 U.S.C. § 1400(b). Albertsons has committed and continues to commit acts of patent infringement in this district, including making, using, offering to sell, and/or selling accused products/services in this district, and/or importing accused products/services into this district, including via Internet sales, inducing others to commit acts of patent infringement in this District, and/or committing at least a portion of any other infringements alleged herein in this District. Albertsons also has regular and established places of business in this District, including at 3603 McCann Rd, Longview, TX 75605; 100 E. Taylor St., Sherman, TX 75093; and 3001 S. Central Expy, McKinney, TX 75070; 200 W Crawford St., Denison, TX 75020; 4415 W 7th St., Texarkana, TX 75501; and 2321 W. University Dr., Denton, TX 76201.

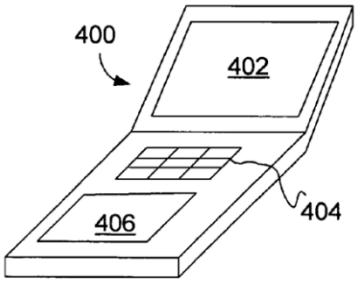
Background Facts

10. Biogy is run by the inventor of the ’236 Patent, Dr. Michael Fiske. Dr. Fiske was awarded a doctorate degree in mathematics from Northwestern University after receiving a bachelor’s degree in biology from Stanford University. He has spent much of his career addressing issues involving secure communications and other aspects of cybersecurity and is the inventor on more than 50 issued patents.

11. One of Dr. Fiske’s inventions was the use of “one time” or “single use” passwords as a way of increasing cybersecurity and protecting against unauthorized access to accounts or devices. Dr. Fiske’s utility patent application filed on April 6, 2005, expressly contemplated the use of one-time passwords using devices such as mobile phones, and the patent includes a drawing and description of how they could be used to enter secure passwords and confirm authorization to an account:

Figure 4 from the '236 patent, showing a mobile phone as a "passcode device"

FIG. 4



12. In the years following Dr. Fiske's invention, the use of such passwords to enhance cybersecurity has been standardized and become widespread. Dr. Fiske's patented technology is used by one standard technique for issuing one-time passwords: Time-based One-Time Passwords, or TOTP. TOTP passwords are often used by companies as a part of a two-factor authentication process. In one typical use, after a user logs into an account with a username and regular password, the system initiates a TOTP-request, and a time limited, one-time, additional password is sent to a separate account known to be associated with the user such as a mobile phone number or email account. Time-based passwords expire after a pre-set time limit, and the user must retrieve the password and enter it into the system he or she is trying to access.

13. The claimed inventions make specific improvements to the functionality and security of electronic systems and one-time passcodes. The '236 Patent's claims address specific, technical problems with maintaining the security of computer systems via passcodes and passcode devices. The '236 specification enumerates the technical problems with the prior art addressed by the claimed invention, for example, hacking and theft:

> In an embodiment, the frequency of passcodes issued to the same user being repeated is low enough that it is unlikely that the interception of an old passcode will be useful to a hacker. Since the passcode is not stored beyond an expiration time, the passcode itself cannot be stolen accept during the brief period between the time the passcode is generated and the passcode expires. In an embodiment in which the passcode is valid for only one use, the passcode does not need to be stored at all and can only be stolen during the brief period between when the passcode is generated and used.

14. These challenges are particular to internet security and electronic passcodes or passwords. The claims do not resolve these problems by reciting an abstract idea or through routine, well-understood, or conventional steps or components. At the time of the invention, the individual elements in the claim, and the claimed combination, were not well-understood, routine, or conventional activity. For example, a standardized TOTP algorithm was not adopted as Internet Engineering Task Force (IETF) standard RFC 6238 until May 2011.

15. The claims do not recite the performance of a business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

16. The specific solution claimed in the claims of the ’236 Patent do not claim the entire field of “multi-factor authentication” or “two factor authentication.” For example, there are other methods for multifactor authentication that do not involve sending temporary one-time passcodes that are created using a passcode generator that perturbs.

17. On April 24, 2024, Biogy sent a notice of infringement letter and claim chart Albertsons. Exhibit B. The letter was delivered on April 26, 2024.

18. The claim chart sent with the letter is incorporated by reference in this Complaint as Exhibit C and details the specifics of how Albertsons use of the passcode infringes the ’236 Patent.

19. Following the initial letter, there were follow-up communications with Albertsons, including a request by Albertsons on August 27, 2024 to send another copy of the letter and claim chart by email. The requested materials were sent the same day.

20. Despite repeated efforts to follow up, there have been no substantive communications with Albertsons after the letter and claim were sent in April and August. To date, Albertsons has not agreed to take a license to the '236 Patent and has not explained why it believes a license might not be needed.

Count I: Infringement of U.S. Patent No. 7,669,236

21. Biogy reasserts and realleges the previous paragraphs of this Complaint as though set forth fully here.

22. Albertsons directly infringes at least claims 5, 12, 14, and 24 of the '236 Patent. Albertsons performs each and every limitation of the claimed methods.

23. These claims recite:

5. A method comprising:

generating, via a machine, a passcode that is valid temporarily, wherein the passcode is based on information associated with a user, the passcode will be referred to as a passcode generated; and

determining whether an attempted access is permitted, based on the passcode generated, by at least determining whether the passcode generated matches a passcode received;

wherein the generating of the passcode generated includes at least

generating a current passcode generator based on the information, the passcode being based on the information by being based on the passcode generator that is associated with the information; and

generating the passcode from the current passcode generator;

the method further including at least if it is determined that the passcode generated matches the passcode received,

granting access to the user;

applying a function to the current passcode generator to generate a new passcode generator; and

storing the new passcode generator in place the current passcode generator.

12. A method comprising:

receiving at a machine a passcode from a user;

retrieving at least one passcode generator from a storage unit associated with the machine;

generating at least one passcode from the at least one passcode generator;

determining whether the at least one passcode of the at least one passcode generated matches the passcode received;

if the one passcode matches the passcode received,

granting the user access to a secure entity,

perturbing the at least one passcode generator of the at least one passcode generator to create a new passcode generator, and

storing the new passcode generator in place of the at least one passcode generator.

14. The method of claim 12, wherein the at least one passcode is only one passcode; and if the one passcode and the passcode received do not match, denying the user access to the secure entity.

24. A method comprising:

after a registration process is complete, receiving a request for access, from a user, the request including a first user-generated passcode

that is valid temporarily, and

that is generated based on information associated with the user;

in response to the receiving of the user-generated passcode, generating, via a machine that runs an automated administrator, an administrator-generated passcode that is valid temporarily, wherein the administrator-generated passcode is generated by the automated administrator based on information associated with the user by at least the automated administrator generating the administrator generated passcode from a current passcode generator that is based on the information; and

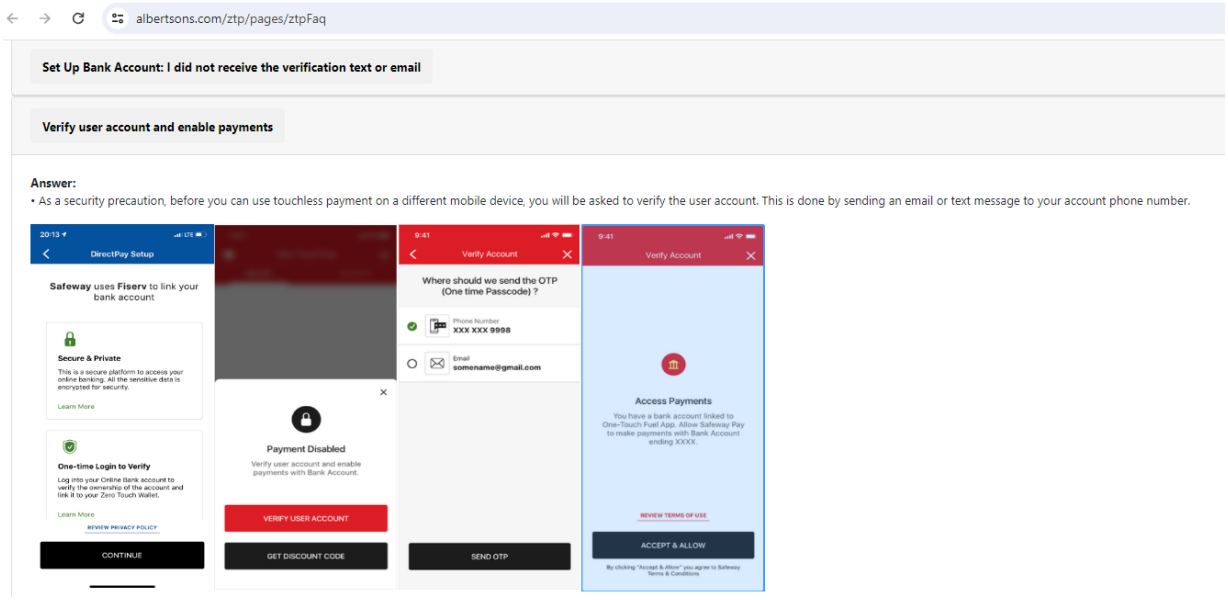
determining whether an attempted access is permitted, based on whether the user-generated passcode and the administrator-generated passcode match;

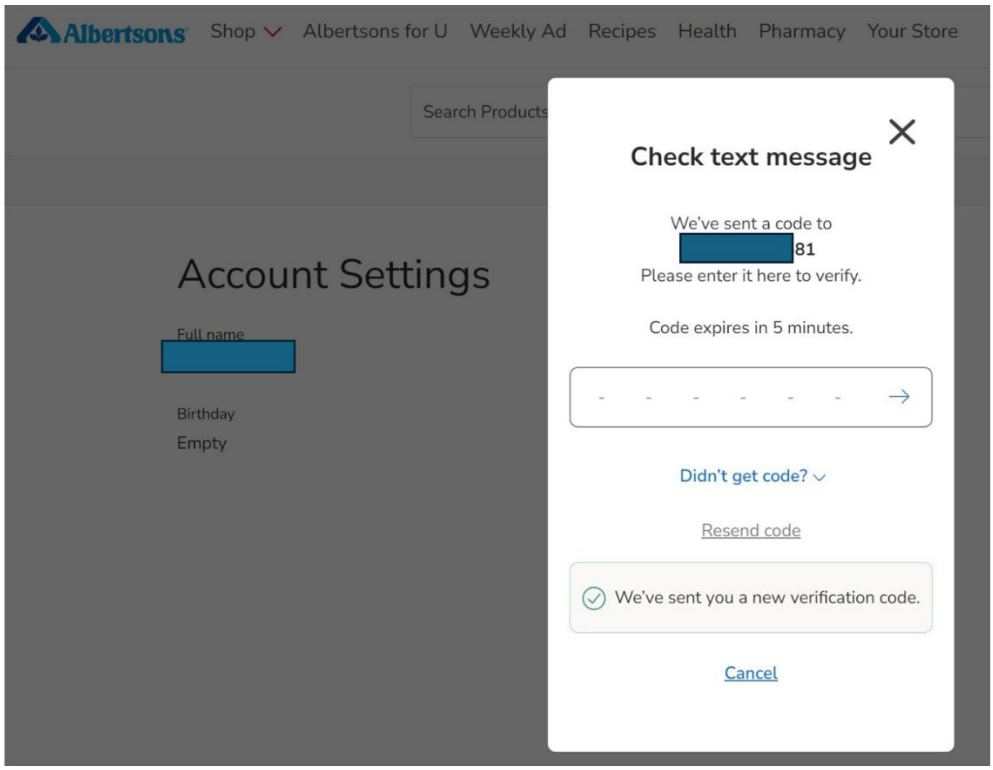
if the user-generated passcode and the administrator-generated passcode match permitting the attempted access;

generating a new passcode generator from the current passcode generator; and

storing the new passcode generator in place of the current passcode generator in a storage unit associated with the machine.

24. Albertsons provides its customers (and, on information and belief, its employees) with temporary, one-time passcodes to allow them to reset forgotten passwords. One of the most common and secure methods of providing these passcodes is via implementation of the TOTP Algorithm, as described in RFC 6238. As shown in the following screenshots, Albertsons has used and is using temporary one-time passcodes at least when a customer with an account at Albertsons has requested a new password:





Source: https://www.albertsons.com/account-reset/forgot-password

25. The message from Albertsons expressly confirms the passcode is temporary, indicating the "Code expires in 5 minutes."

26. On information and belief, the temporary password sent by Albertson is generated using a TOTP algorithm such as the one described in RFC 6298.

27. By ignoring Biogy's pre-suit outreach, Albertsons declined to communicate about the precise nature of the algorithm used to generate its one-time passcodes.

28. Biogy has suffered and is suffering damages as a result of Albertsons's infringement, which damages will include at least a reasonable royalty in an amount to be determined at trial.

29. Albertsons has had knowledge of the '236 Patent and allegations of how the Accused website infringes claims of the '236 Patent since at least June 26, 2024, when Albertsons received a notice of patent infringement letter from Biogy. Albertsons's infringement of the '236

Patent is therefore willful and deliberate, entitling Biogy to increased damages under 35 U.S.C. § 284.

30. Albertsons' conduct is also exceptional, entitling Biogy to recover its attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

Jury Demand

Biogy demands a trial by jury on all issues that may be so tried.

Request For Relief

WHEREFORE, Plaintiff Biogy requests that this Court enter judgment in its favor and against Defendant Albertsons as follows:

A. Adjudging, finding, and declaring that Albertsons has infringed the '236 Patent under 35 U.S.C. § 271;

B. Awarding the past damages arising out of Albertsons's infringement of the '236 Patent, to Biogy either in Biogy's lost profits or in an amount no less than a reasonable royalty, together with prejudgment and post-judgment interest, in an amount according to proof;

C. Adjudging, finding, and declaring that Albertsons' infringement is willful and awarding enhanced damages and fees as a result of that willfulness under 35 U.S.C. § 284;

D. Awarding attorneys' fees, costs, or other damages pursuant to 35 U.S.C. §§ 284 or 285 or as otherwise permitted by law;

E. Entering an injunction preventing Albertsons from continuing to infringe the '236 Patent;

F. Granting Biogy such other further relief as is just and proper, or as the Court deems appropriate.

Dated: October 17, 2024

Respectfully submitted,

/s/ David Berten
David Berten
IL Bar #6200898 (*also admitted in ED Texas)*
Alison Aubry Richards
IL Bar # 6285669 (*also admitted in ED Texas*)
arichards@giplg.com
Global IP Law Group, LLC
55 West Monroe Street, Suite 3400
Chicago, IL 60603
Telephone: (312) 241-1500

Attorneys for Plaintiff Biogy, Inc.